

*DRUCE, GAIR*  
*SWM*

LATHAM & WATKINS

ATTORNEYS AT LAW

701 "B" STREET, SUITE 2100

SAN DIEGO, CALIFORNIA 92101-8197

TELEPHONE (619) 236-1234

TELECOPIER (619) 696-8281

TLX 590778

ELN 62793276

CHICAGO OFFICE

SEARS TOWER, SUITE 6900

CHICAGO, ILLINOIS 60606

TELEPHONE (312) 876-7700

TELECOPIER (312) 993-9767

TLX 590776

ELN 62793271

LOS ANGELES OFFICE

555 SOUTH FLOWER STREET

LOS ANGELES, CALIFORNIA 90071-2486

TELEPHONE (213) 485-1234

TELECOPIER (213) 680-2098

TLX 590773

ELN 62793268

CABLE ADDRESS LATHWAT

NEWPORT BEACH OFFICE

660 NEWPORT CENTER DRIVE, SUITE 1400

NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE (714) 752-9100

TELECOPIER (714) 759-8891

TLX 590777

ELN 62793272

PAUL R. WATKINS (11899-1973)

DANA LATHAM (11898-1974)

*CAD 981 172 584 2A-1*

NEW YORK OFFICE

437 MADISON AVENUE, SUITE 1400

NEW YORK, NEW YORK 10022

TELEPHONE (212) 319-2570

TELECOPIER (212) 751-4864

TLX 510102680

ELN 62891922

WASHINGTON, D.C. OFFICE

1333 NEW HAMPSHIRE AVE., N.W., SUITE 1200

WASHINGTON, D.C. 20036-1594

TELEPHONE (202) 828-4400

TELECOPIER (202) 828-4415

TLX 590775

ELN 62793269

January 23, 1986

Mr. Angelo Bellomo  
Chief, Southern California Section  
Toxic Substances Control Division  
California Department of Health  
Services  
107 S. Broadway, Room 7128  
Los Angeles, California 90012

Re: Executive Summary: U.S. Navy  
Violations of California Hazardous  
Waste Control Requirements

Dear Angelo:

Thank you for returning my call so promptly on Tuesday. As promised, I have enclosed our analysis of the position recently adopted by the U.S. Navy ("USN") concerning management responsibilities for hazardous wastes generated by its ships, together with relevant documents. At your suggestion, I am simultaneously forwarding the enclosure to Marsha Croninger of your staff for her review.

Given the volume of the enclosed materials, I thought it would be helpful to provide a summary overview of the issues. In essence, the USN has decided that it will no longer manifest wastes generated by its ships which are undergoing repair and alteration work at commercial shipyards, insisting instead that the ship repair contractors or subcontractors ("Contractors") assume the USN's generator duties. This wrongful refusal to comply with California Hazardous Waste Control Law ("HWCL") requirements has created an untenable regulatory and economic dilemma for San Diego Contractors, and has already

Angelo Bellomo  
January 23, 1986  
Page 2

resulted in the issuance of one Notice of Violation to the USN by the San Diego County Department of Health Services.

In support of its position, the USN contends that it enjoys sovereign immunity from compliance with California hazardous waste regulations for materials not specifically listed as hazardous by federal regulations, e.g. asbestos and bilge water. The USN has also decided that a generator's legal and administrative duties are incompatible with the mobile nature of its vessels, and argues that it is not in any event the generator of hazardous wastes produced by its ships.

Not one of these arguments is correct. As a result of prior inquiries by the Contractors, the California Department of Health Services has already concluded that the USN is the generator of the hazardous wastes produced by Navy ships. It is also clear that the USN has an affirmative statutory obligation to comply with California hazardous waste control requirements and is amenable to injunctive relief and sanctions for its violations of California law. Moreover, there is no legal basis, or compelling practical reason, for exempting the USN from compliance with the HWCL simply because its ships move. In fact, the mobility of Navy ships (and ships in general) makes their regulation all the more imperative. Were the State to exempt from HWCL compliance all ships which use California ports, literally hundreds of waste-generating sites would not be subject to direct State control.

Because the USN's policies are to be implemented nationwide, the problem which has first surfaced in San Diego will soon affect the entire State. As I mentioned to you yesterday, it appears that the USN may already be implementing its new policies in the Bay Area.

Given the enormous potential economic and regulatory impact of the USN's new position on San Diego Contractors, we are of course anxious to resolve this matter as quickly as possible. We have already had unsuccessful discussions with local Navy representatives, who are completely constrained by the new Navy-wide policies. We have, however, been able to tentatively schedule a meeting with Navy policymakers in Washington, D.C. on February 5, 1985.

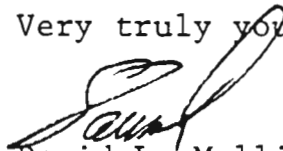
Angelo Bellomo  
January 23, 1986  
Page 3

Subsequent to our conversation on Tuesday, we learned that we are not in fact under any obligation to communicate directly with Dr. Kizer on this matter. Therefore, in light of your interest, we will not forward the enclosure to him now, despite our previous indication to the contrary. We have, however, been informed by several Contractors that both local congressmen and the Lieutenant Governor have, as a result of previous meetings among them, requested further information regarding this growing dispute, requests which will need to be satisfied shortly.

I hope that the enclosed analysis will facilitate your staff's review of the matter. We will be in touch with Marsha early next week to determine if there is any other way in which we can be of assistance. If at all possible, it would be extremely helpful to us if we could discuss this matter with you before our scheduled trip to Washington early next month (although we certainly understand your time constraints). I will call to discuss this possibility with you next week.

Again, I appreciate your attention to this important issue, Angelo, and look forward to future discussions after you have had an opportunity to review the enclosed materials. In the meantime, please do not hesitate to call should you have any questions.

Very truly yours,



David L. Mulliken  
of LATHAM & WATKINS

Enclosure

cc: (w/encl)

Marsha Croninger, Esq., California Department  
of Health Services

Dan Avera, County of San Diego Department of  
of Health Services

Port of San Diego Ship Repair Association